

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KAREEM HASSAN MILHOUSE, :
: CIVIL NO. 1:16-CV-01348
Petitioner :
: (Judge Rambo)
vs. :
: (Judge Rambo)
WARDEN DAVID EBBERT, :
: (Judge Rambo)
Respondent :
:

MEMORANDUM

Background

On July 1, 2016, Kareem Hassan Milhouse, a prisoner confined at the United States Penitentiary, Lewisburg, Pennsylvania, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1.) Along with the petition Milhouse filed a motion for leave to proceed in forma pauperis. (Doc. 2.)

The petition will now be given preliminary consideration pursuant to Rule 4 of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254, as made applicable

to § 2241 cases by Rule 1 thereof.¹ For the reasons set forth below Milhouse's petition will be dismissed.

Discussion

Milhouse's petition is scant in detail. (Doc. 1.) The court can discern, however, from the petition and attachments thereto that he is challenging the outcome of seven prison disciplinary proceedings where he was found guilty of engaging in lewd and disruptive behavior by a Discipline Hearing Officer ("DHO") and received sanctions, including the loss of good conduct time. The seven disciplinary proceedings involve Incident Reports 1673325, 1888117, 1895488 (appeal case number 565287),² 2378357 (appeal case number 721179),³

1. Rule 4 states in pertinent part that "[t]he clerk must promptly forward the petition to a judge under the court's assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition"

2. Milhouse in the petition refers to the appeal case number. (Doc. 1, at 3, 8, 11, 12, 13, 15.)

3. Id.

2546675 (appeal case number 789406),⁴ 2542559 (appeal case number 789407)⁵ and 2557240 (appeal case number 775739).⁵ Milhouse claims he was denied due process during the proceedings.⁶ Milhouse did not attach copies of the incident reports or the decisions of the DHO to his § 2241 petition. However, he attached a portion of his prison disciplinary record (Inmate Discipline Data Chronological Disciplinary Record). (Id. at 11-16.)

Liberty interests protected by the Fifth Amendment may arise either from the Due Process Clause itself or from statutory law. Torres v. Fauver, 292 F.3d 141 (3d Cir.2002). It is well-settled that "prison disciplinary proceedings are not part of a criminal prosecution and the full panoply of rights due a defendant in such proceedings does not apply." Wolff v.

4. Id.

5. Id.

5. Id.

6. The petition reveals that Milhouse is serving sentences imposed on December 3, 2007, and February 15, 2008, by the United States District Court for the Eastern District of Pennsylvania. Milhouse does not specify the offenses of which he was found guilty or the sentences he received.

McDonnell, 418 U.S. 539, 556 (1974). Nevertheless, the Supreme Court found that there can be a liberty interest at stake in disciplinary proceedings in which an inmate loses good conduct time. Id. Since Milhouse's sanctions did include the loss of good conduct time, Milhouse has identified a liberty interest in this matter.

In Wolff, the Supreme Court set forth the following minimum procedural due process rights to be afforded to a prisoner accused of misconduct in prison which may result in the loss of good time credit: (1) the right to appear before an impartial decision-making body; (2) twenty-four hour advance written notice of the disciplinary charges; (3) an opportunity to call witnesses and present documentary evidence in his defense when it is consistent with institutional safety and correctional goals; (4) assistance from an inmate representative if the charged inmate is illiterate or complex issues are involved; and (5) a written decision by the fact finder of the evidence relied upon and the rationale behind the disciplinary action. Wolff, 418

U.S. at 563-67. The Supreme Court has held that the standard of review with regard to the sufficiency of the evidence is whether there is "any evidence in the record that could support the conclusion reached by the disciplinary board." Superintendent v. Hill, 472 U.S. 445-46 (1985); see also Griffin v. Spratt, 969 F.2d 16, 19 (3d Cir.1992). If there is "some evidence" to support the decision of the hearing examiner, the court must reject any evidentiary challenges by the petitioner. Hill, 472 U.S. at 457. The Hill standard is minimal and does not require examination of the entire record, an independent analysis of the credibility of the witnesses, or even a weighing of the evidence. See Thompson v. Owens, 899 F.2d 500, 501-502 (3d Cir. 1989).

The inmate disciplinary procedures of the Federal Bureau of Prisons ("BOP") are codified at 28 C.F.R. § 541, et seq., and entitled, Inmate Discipline and Special Housing Units. These procedures are intended to meet or exceed the due process requirements prescribed by the Supreme Court. See Von Kahl v. Brennan, 855 F.Supp. 1413, 1418 (M.D.Pa.1994). Pursuant

to these regulations, staff shall prepare an incident report when there is reasonable belief that a violation of BOP regulations has been committed by an inmate and the staff considers informal resolution of the incident inappropriate or unsuccessful. 28 C.F.R. § 541.5. The incident is then referred to the Unit Discipline Committee ("UDC") for an initial review pursuant to § 541.7.

The UDC review/hearing is "ordinarily [held] within five work days after [the incident report] is issued" and does not include the initial day staff learns of the incident, weekends or holidays. Id. If the UDC finds that a prisoner has committed a prohibited act, it may impose any of the available sanctions set forth in 28 C.F.R. § 541.3 (Tables 1 and 2) except loss of good conduct time, disciplinary segregation, or monetary fine. Id. If the alleged violation is serious and warrants consideration for more than minor sanctions, or involves a prohibited act listed in the greatest severity category, the UDC must refer the matter to a DHO for a hearing. Id.

A DHO "will only conduct a hearing on the incident report if referred by the UDC." 28 C.F.R. § 541.8. An inmate will receive written notice of the charges 24 hours before the DHO hearing unless the inmate waives the notice requirement in which case the DHO can conduct the hearing sooner. Id. The inmate is permitted to have a staff representative at the hearing and entitled to make a statement and present documentary evidence. Id. After the hearing the DHO will either (1) find the inmate committed the prohibited act or similar one described in the incident report; (2) find the inmate did not commit the prohibited act charged; or (3) refer the incident report back for further investigation, review and disposition. Id. If an inmate is found to have committed a prohibited act, the DHO can impose any of the available sanctions listed in Table 1 and 2⁷ of § 541.3. Id. Finally, the written report or decision of the DHO will contain the following: (1) whether the inmate was advised of his or her rights during the proceedings; (2) the evidence relied on by the DHO; (3)

7. Table 2 set forth sanctions for repeated prohibited acts within the same severity level.

the DHO's finding of guilt or innocence; (4) the sanctions imposed; and (5) the reasons for the sanctions imposed. Id.

The BOP has established an administrative remedy procedure, which is set forth at 28 C.F.R. § 542.10 et seq., whereby a federal prisoner may seek formal review of any aspect of his imprisonment. Inmates must first informally present their complaints to staff, and staff shall attempt to informally resolve any issue before an inmate files a request for administrative relief. 28 C.F.R. § 542.13(a). If unsuccessful at informal resolution, the inmate may raise his complaint with the warden of the institution where he is confined. Id. at § 542.14(a). If dissatisfied with the response, the inmate may then appeal an adverse decision to the Regional Office and then to the Central Office of the BOP. Id. at §§ 542.15(a). However, the first two steps, informal resolution and appeal to the Warden, do not apply to appeals from decisions of a DHO. 28 C.F.R. § 542.14(d) (2). The inmate is to appeal directly to the Regional Office within twenty (20) days of the decision

of the DHO. Id. No administrative remedy appeal is considered to have been fully and finally exhausted until it has been denied by the BOP's Central Office. Id. Furthermore, the fact that the Regional Office fails to respond to an appeal does not relieve an inmate of his responsibility to proceed to the final step, i.e., submitting an appeal to the Central Office of the BOP because an appeal to the Regional Office is deemed responded to and denied "[i]f the inmate does not receive a response within [30 calendar days of submission of the appeal]." 28 C.F.R. § 542.18. Under those circumstances "the inmate may consider the absence of a response to be a denial at that level." Id. Likewise, a failure of the Central Office to act within 40 calendar days is considered a denial. Id. However, the Central Office as stated above may extend for a period of 20 days the time for it to decide the appeal and so notify the inmate. Id.

The court will now review the Incident Reports in chronological order. The first proceeding Milhouse challenges involves Incident Report 1673325 where he was charged on November 30, 2007, with Prohibited Act 205,

Engaging in Sexual Acts. (Doc. 1, at 2-3, 16.) A hearing before a DHO was held on December 12, 2007, and the DHO found Milhouse guilty of the prohibited act and imposed sanctions, including the loss of 27 days of good conduct time. (Id.) The document attached to the petition by Milhouse reveals that he was charged with masturbating in front of a psychologist and that he refused to attend the disciplinary hearing. (Id. at 16.) With respect to this disciplinary hearing Milhouse in the section of the petition entitled "Grounds for Your Challenge in this Petition" claims that his due process rights were violated when he was not given an opportunity to attend the hearing or present documentary evidence. (Id. at 7-9.) Milhouse alleges that he appealed the decision of the DHO to the Northeast Regional Office of the BOP on an unspecified date and that the Regional Office did not respond. Id. He then contends he appealed to the Central Office which also did not respond. Id. The administrative proceedings with respect to Incident Report 1673325 were concluded more than 8 years ago. Consequently, Milhouse's present § 2241 petition as it relates to Incident Report 1673325

will be dismissed because he failed to (1) allege that he filed his appeal to the Regional Office or the Central Office within the time mandated by 28 C.F.R. §§ 542.14 and 542.18 and (2) file the present petition within 1-year of the date that his administrative remedies would have been exhausted if in fact he pursued those remedies in accordance with the regulations.

The applicability of the 1-year statute of limitations to the present § 2241 federal habeas petition cannot be questioned. Rule 1(b) of the Rules Governing Section 2254 Cases In the United States District Courts provides that "[t]he district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a) which states that the Rules apply to § 2254 state habeas cases. Rule 3(c) goes on to provide that the time for filing a petition is governed by 28 U.S.C. §2244(d) which sets a 1-year limitation period. Applying Rule 3(c) to the present habeas petition based on the authority of Rule 1(b), if Milhouse had pursued his administrative remedies, the 1-

year period would have commenced no latter than December 31, 2008, over 7 $\frac{1}{2}$ years ago, and his present petition as it relates to Incident Report 1673325 is untimely filed. See Shelby v. Barlett, 391 F.3d 1061, 1066 (9th Cir. 2004) (state parole board's denial of an inmate's administrative appeal was the "factual predicate" of the inmate's claim that triggered the commencement of the limitations period); Wilson v. Wrigley, No. 1:07-CV-00142-LJO-DLB-HC, 2007 WL 2900216, at *1-2 & n.1 (E.D.Cal. Oct. 4, 2007) (O'Neill, J.) (adopting in part report of Magistrate Judge) ("Petitioner contends that Rule 4 of the Rules Governing Section 2254 Cases may not be applied to the instant Section 2241 petition. Petitioner is mistaken. The Rules Governing Section 2254 Cases may be applied to petitions for writ of habeas corpus other than those brought under § 2254 at the Court's discretion."); Wilson v. Wrigley, No. 1:07-CV-00142-LJO-DLB-HC, 2007 WL 1378024, at *2 (E.D. Cal. May 10, 2007) (Beck, Mag.J.) (applying the 1-year statute of limitations to a § 2241 habeas petition filed by a

federal inmate challenging a decision of a DHO). Furthermore, as stated earlier the fact that the Regional or Central Office does not respond is not an excuse for failing to pursue an action in the district court because the appeal to the Regional Office or Central Office is deemed responded to and denied if the inmate does not receive a response within the time set forth in the regulations.

With respect to Incident Report 1888117, Milhouse was charged on July 2, 2009, with Prohibited Act 205, Engaging in Sexual Acts. (*Id.* at 15.) A hearing was held before a DHO on July 7, 2009. (*Id.*) At the hearing Milhouse denied the charge and stated that the charge was fabricated. (*Id.*) The DHO found Milhouse guilty and imposed sanctions, including the loss of 27 days of good conduct time. (*Id.* at 16.) In the present petition, Milhouse claims that he was denied due process because he did not have 24-hours advance notice of the charge and that the charge was vague. (*Id.* at 9.) Milhouse further claims that he appealed the decision of

the DHO to both the Northeast Regional Office and the Central Office but neither of those offices responded to his appeals. The administrative proceedings with respect to Incident Report 1888117 were concluded more than 6 years ago. Consequently, Milhouse's present § 2241 petition as it relates to Incident Report 1888117 will be dismissed because he failed to (1) allege that he filed his appeal to the Regional Office or the Central Office within the time mandated by 28 C.F.R. §§ 542.14 and 542.18 and (2) file the present petition within 1-year of the date that his administrative remedies would have been exhausted if in fact he pursued those remedies in accordance with the regulations.

The third Incident Report, number 1895488 (appeal case number 565287), was filed on July 21, 2009, and charged Milhouse with Engaging in Sexual Acts. (Id. at 15.) A hearing was held before a DHO on August 11, 2009, at which time Milhouse admitted that he was guilty and the DHO based on that admission found him guilty and imposed sanctions, including the loss of 41 days of good

conduct time. (Id.) Milhouse claims that his due process rights were violated because he did not have 24-hours notice of the charge and the charge was vague. (Id. at 8.) Milhouse does not state that he appealed to the Regional Office but contends that he appealed to the Central Office without specifying the date and that the Central Office did not respond. (Id.) The administrative proceedings with respect to Incident Report 1895488 (appeal case number 565287) were concluded at least 5 years ago. Consequently, Milhouse's present § 2241 petition as it relates to Incident Report 1895488 (appeal case number 565287), will be dismissed because he failed to (1) allege that he filed an appeal to the Regional Office or the Central Office within the time mandated by 28 C.F.R. §§ 542.14 and 542.18 and (2) file the present petition within 1-year of the date that his administrative remedies would have been exhausted if in fact he pursued those remedies in accordance with the regulations.

The fourth Incident Report, number 2378357 (appeal case number 721179), was filed on November 23, 2012, and charged Milhouse with Prohibited Act 299, Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (Id. at 13.) The document attached to the petition by Milhouse reveals that he was "observed at pill line w[ith] [his] hands down his pants moving them." (Id.) A hearing was held before a DHO on December 10, 2012, at which time Milhouse denied the charge. (Id.) The DHO found Milhouse guilty of the prohibited act and imposed sanctions, including the loss of 27 days of good conduct time. (Id.) With respect to this incident report and the disciplinary proceedings Milhouse in the petition for writ of habeas corpus claims that he was denied due process because he did not received 24-hour advance notice of the charge, he was denied a staff representative, he was denied the opportunity to present witnesses and surveillance camera footage, and the charge was vague. (Id. at 8.) Milhouse

contends that he appealed to the Mid-Atlantic Regional Office and the Central Office on unspecified dates and he did not receive a response from either office. Id. The administrative proceedings with respect to Incident Report 2378357 (appeal case number 721179) were concluded at least 3 years ago. Consequently, Milhouse's present § 2241 petition as it relates to Incident Report 2378357 (appeal case number 721179) will be dismissed because he failed to (1) allege that he filed his appeal to the Regional Office or the Central Office within the time mandated by 28 C.F.R. §§ 542.14 and 542.18 and (2) file the present petition within 1-year of the date that his administrative remedies would have been exhausted if in fact he pursued those remedies in accordance with the regulations.

The fifth Incident Report, number 2546675 (appeal case number 789406), was filed on February 8, 2014, and charged Milhouse with Engaging in Sexual Acts. (Id. at 12.) The document attached to the petition by Milhouse reveals that he was "found to have been

stroking his penis knowing a staff member was present at his cell door." (Id.)

The sixth Incident Report, number 2542559 (appeal case number 789407) was filed on January 28, 2014, and charged Milhouse with Engaging in Sexual Acts. (Id. at 11.) The document attached to the petition by Milhouse reveals that he was "found to have been stroking his penis knowing a staff member was present at his cell door." (Id.)

The seventh Incident Report, number 2557240 (appeal case number 775739) was filed on January 28, 2014, and charged Milhouse with Engaging in Sexual Acts. (Id. at 11.) The document attached to the petition by Milhouse reveals that he was "found to have been stroking his penis knowing a staff member was present at his cell door." (Id.)

A hearing was held before a DHO on March 13, 2014, with respect to the fifth, sixth and seventh incident reports at which time Milhouse denied the charges set forth in the fifth and sixth incident

reports but admitted the charge set forth in the seventh incident report. (Id. at 11-12.) The DHO found Milhouse guilty of the prohibited acts charged in those incident reports and imposed sanctions with respect to each incident report, including the loss of 27 days of good conduct time. (Id.) In the § 2241 petition Milhouse with respect to the fifth, sixth and seventh incident reports and the disciplinary hearing held on March 13, 2014, claims he was denied due process because he was on a suicide watch from February 28 to March 15, 2014; he was denied a staff representative; he was denied the opportunity to present witnesses; he was denied camera surveillance footage; and he was not provided with 24 hours advance notice of the charges. (Id. at 8.)

Milhouse claims that he appealed the decisions of the DHO to the Mid-Atlantic Regional Office on April 15, 2014, and that the Regional Office denied his appeals in June and August, 2014. (Id. at 2.) Milhouse then contends he appealed to the Central Office but does

not specify the date on which he submitted his appeal. (*Id.* at 4.)

Based on the August, 2014, date that Milhouse claims he appealed to the Central Office, it is clear that the administrative proceedings with respect to Incident Reports 2546675 (appeal case number 789406), 2542559 (appeal case number 789407) and 2557240 (appeal case number 775739) were concluded more than 1 year prior to Milhouse filing the instant habeas petition on July 1, 2016. Consequently, Milhouse's present § 2241 petition as it relates to all of the remaining incidents reports will be dismissed because he failed to (1) allege that he filed his appeal to the Central within the time mandated by 28 C.F.R. § 542.18 and (2) file the present petition within 1-year of the date that his administrative remedies would have been exhausted if in fact he pursued those remedies in accordance with the regulations.

Finally, because Milhouse is not detained because of process issued by a state court and the petition is not brought pursuant to 28 U.S.C. § 2255, no action by this court with respect to a certificate of appealability is necessary.

An appropriate order will be entered.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge